

COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 83 of 2002

National Insurance Company Ltd. **Appellant.**

Versus

Smt. Bhagwati Pandey
and another. **Respondents.**

**Coram : Hon'ble P.C. Verma, J.
 Hon'ble B.S. Verma, J.**

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (*in short the Act*) against the judgment and Award, dated 19-1-2002, passed in M.A.C.T. Case No. 101 of 2001, Smt. Bimla Devi and another Vs. Gaje Singh and others, by the Motor Accident Claims Tribunal/Additional District Judge, Haldwani (Nainital) (*hereinafter referred to as the Tribunal*), whereby the learned Tribunal has awarded a sum Rs. 4,67,000/- along with interest @ 9% per annum in favour of the claimants-respondent no. 1 as against the Opposite Party No.2 – appellant. Aggrieved, the Insurance Company has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground that the claim petition has been filed by the claimant in collusion with the owner of the vehicle, and on the ground of validity of driving licence of the driver of the truck in question.

Brief facts of the case are that claimant-respondent no. 1 filed a claim petition before the learned Tribunal for compensation under Section 166 of the Act for death of the deceased Dharmanand Pande who died in a motor accident occurred on 3.2.2002 at about 8.30 p.m. at Mandi Gate Bareilly Road Haldwani due to rash and negligent driving by the driver of

Truck No. UP 13-4587. The deceased was aged about 34 years and was earning Rs. 15000/- p.m. In the said motor accident the deceased succumbed to his injuries on the spot. Post Mortem was conducted at Base Hospital Haldwani. The Opposite Party No.1, owner of the vehicle, filed his written statement and contested the case. It has been pleaded that the vehicle in question was duly insured and the driver was holding a valid driving licence. O.P. No.2-appellant has also filed its written statement and has denied the allegations made in the claim petition. The learned Tribunal, on the pleadings of the parties, framed as many as four Issues in the case. Issue No. 1 related to rash and negligent driving of the driver of vehicle No. UP 13-4587 resulting in the death of the deceased. Issue Nos. 2 and 4 related to the relief and Issue No.3 related to due insurance of the vehicle involved in the accident.

Learned Tribunal after hearing both the parties and going through the evidence on record, took Issue No.1 for decision. The Tribunal came to the conclusion found that the motor accident resulting in the death of the deceased was caused due to rash and negligent driving of the driver of the truck in question. On Issue No.3, the learned Tribunal found that the truck was duly insured on the date of accident. The Tribunal also found on the basis of evidence that the driver of the vehicle involved in the accident was holding a valid driving licence. On Issue No.2, the learned Tribunal after discussing the entire evidence on record found that the monthly income of the deceased can be safely determined at Rs. 3000/- and in addition, income from agriculture was assessed to be 600/-. Thus, annual income has been worked out as Rs. 43,200/-. Out of this amount, 1/3rd has been deducted towards personal expenses of the deceased. The age of the deceased was found between the age group of 30-35 years. Considering the facts and circumstances of the case, the learned Tribunal has applied multiplier of 15 to determine the loss of dependency and accordingly, awarded Rs. 4,32,000/- on this count. In addition, Rs. 5,000/- has been awarded towards funeral expenses, amount of Rs.

10,000/- towards loss of consortium and Rs.5000/- each to two minor children for loss of love and affection. Ultimately, the claim petition was decreed for total compensation of Rs. 4,67,000/- along with simple interest @ 9% per annum, with certain directions, as mentioned in the impugned order.

We have heard Mr. Bindesh Kumar Gupta, learned counsel for the appellant and Sri M.C. Kandpal, Advocate, appearing on behalf of the respondent no.1-claimant and have carefully gone through the entire material available before us as well as the impugned judgment and award.

Learned counsel for the appellant firstly submitted that the learned Tribunal has not decided the objection under Section 170 of the Act filed by the appellant before the learned Tribunal, therefore, the learned Tribunal has not acted in accordance with law. It is true that the Insurance Company has moved an application dated 12.12.2001 before the Tribunal stating therein that the claim petition has been presented in collusion between the claimant and the owner-respondent no.2, therefore, the insurer be allowed to take all the defences to defend the petition. It is true that this application dated 12.12.2001 has been filed before the learned Tribunal. But we are not inclined to accept the contention of the appellant for the simple reason that the Insurance Company has already been arrayed as party to the proceeding by the claimant herself. The provision of Section 170 of the Act is applicable in the cases where during the course of proceeding, the Claims Tribunal is satisfied that (a) there is collusion between the person making the claim and the person against whom the claim is made, or (b) the person against whom the claim is made has failed to contest the claim. Then on the notion of the Tribunal, the insurer is impleaded as a party to the proceeding. Admittedly, permission was not granted to the Insurance Company under Section 170 (b) of the Act to take defences on the grounds other than those mentioned in Section 149(2) of the Act by the learned Tribunal, rather the

Insurance Company has contested the claim by filing its written statement. In the present case, the position is not, so, therefore, this argument of the learned counsel for the appellant is not at all tenable.

It has been next argued before us that the driver of the vehicle in question was not holding a valid driving licence, therefore, the findings of the Tribunal are perverse. We have considered this aspect. Paper No. 11-C/6 and 11-C/7 are on the record. Paper No. 11-C/6 is the permit of the vehicle with the owner of the vehicle, respondent no.2. From a perusal of paper no. 11-C/7, we find that the driver of the vehicle involved in the accident was holding a valid driving licence. The appellant-Insurance Company has failed to adduced any evidence to refute the veracity of the driving licence filed on record, as mentioned above. As mentioned above, other grounds of challenge the impugned award are not available to the appellant under Section 173 of the Act. We are fortified in our view by the Apex Court judgment in the Case of ***“National Insurance Company Ltd. Vs. Nicolletta Rohtagi and others” [(2002) 7, Supreme Court Cases, 456]***. In that case, it has been observed by the Apex Court that ***“even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle.”*** Thus, in view of the law laid down by the Apex Court reported in ***(2002) 7, S.C.C. 456 (supra)***, which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

We are, therefore, not inclined to accept this contention of the appellant. The learned Tribunal has elaborately discussed both oral and documentary evidence on record. Nothing has been pointed out to us to take a different view, so as to warrant

interference with the findings arrived at by the learned Tribunal. We are of the consistent view that no illegality or infirmity has been committed by the learned Tribunal.

Thus, in any of view of the matter, We do not find any reason to interfere with the conclusions arrived at by the learned Tribunal and the judgment and award under appeal deserves to be upheld.

Accordingly, the appeal fails on merit and is liable to be dismissed.

The appeal is dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

The amount in deposit with this Court be transmitted to the Tribunal concerned. The claimant-respondents shall be at liberty to withdraw the amount, if any.

19-08-2004
RCP

(B.S. Verma, J.)

(P.C. Verma, J.)